IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.439 OF 2005
IN
SUMMARY SUIT NO.3207 OF 2004

Kanji J. Raja ....Plaintiff
V/s.
Nitin R. Parekh ....Defendant

Mr.Prem Sood for the Plaintiff.
Mr.P.G. Vora for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH DECEMBER, 2005.

P.C. :

1. The suit is based on three promissory notes dated 1.1.2002, 15.1.2002 and 30.1.2002

2. That the promissory notes were executed is not denied. That the Defendant received an amount of Rs.25,000/- on 26.7.2000 and a further amount of Rs.25,000/- on 25th October, 2001 is not denied. According to the Plaintiff, a sum of Rs.5000/- was also advanced in cash on 2nd August, 2000.

3. The defence is that the promissory notes were executed in blank and kept with one Dayalji Bhai, who was the Plaintiff's brother-in-law. Dayalji Bhai

expired in February, 2002. It is alleged that the said Dayalji Bhai used to keep the blank promissory note as security for payment of leave and licence fees payable by the Defendant to him. It is further the Defendant's case that upon Dayalji Bhai's death, the Plaintiff has some how or the other got these promissory notes and utilized them to file the suit.

4. It is difficult to accept the defence. Firstly, it is important to note that the Plaintiff by his advocate's letter dated 28th October, 2002 demanded the payment. The particulars of the promissory notes was set out therein. There was no reply to the same till the filing of the suit on 31st August, 2004. The defence has been taken up for the first time.

5. It was alleged that the first loan of Rs.25,000/- was repaid and in evidence thereof, a duly cancelled promissory note (Exhibit "1" to the additional affidavit in reply) was relied upon. This promissory note firstly was in the name of the Plaintiff's wife. The same in any event has been denied.

6. It was then submitted that on 26.2.2002, the

said loan of 25th October, 2002 was repaid by a cheque bearing No.36505. In support of the same, the Defendant relied upon his bank statement. It is important to note that the first transaction in his bank statement (Exhibit "2" to the additional affidavit in reply dated 12th December, 2005) is of 12.2.2002. The Defendant did not disclose the fact that on 23.1.2002 an amount of Rs.25,000/- was advanced by the Plaintiff to the Defendant by a cheque bearing No.141241. It was in repayment of this loan that the said amount of Rs.25,000/- was paid by cheque bearing No.36505. In the circumstances, there is no defence to the suit.

7. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed with costs.

. Refund as per rules.